

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MALON BARRETT,

Plaintiff,

v.

No. CV 10-757 MV/GBW

RAY TERRY, Warden, Otero
County Processing Center,

Defendants.


ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte*. On October 3, 2010, Defendant Terry filed a Motion for Summary Judgment.¹ *Doc. 9*. Per our Local Rules, Plaintiff had 14 days to respond to Defendant's motion. D.N.M.LR-Civ 7.4(a). Plaintiff, however, has still not filed his response to the Motion for Summary Judgment. Under our Local Rules "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ 7.1(b). Moreover, Plaintiff's failure to prosecute indicates a lack of interest in litigating his claims. *See*

¹ The Court notes that the filing of a Motion for Summary Judgment prior to answering a complaint is within the bounds of proper procedure. *See Marquez v. Cable One, Inc.*, 463 F.3d 1118, 1120 (10th Cir. 2006). Because the motion was properly filed, Plaintiff had a duty to respond within the deadline set out by D.N.M.LR-Civ 7.4 and FED. R. CIV. P. 6(a).

Martinez v. Internal Revenue Service, 744 F.2d 71, 73 (10th Cir. 1984); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962). The Court will require Plaintiff to show cause why his complaint should not be dismissed.

IT IS THEREFORE ORDERED that, within twenty-one (21) days from entry of this order, Plaintiff shall file a response showing cause, if any, why his complaint should not be dismissed. Failure to respond to this order to show cause will constitute an independent basis for dismissal.



UNITED STATES MAGISTRATE JUDGE